

## **PART 806—COMPETITION REQUIREMENTS**

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**SUBPART 806.3 - OTHER THAN FULL AND OPEN COMPETITION**

**806.302-3 Industrial mobilization; or experimental, development, or research work.**

Research authorized to be conducted by the Department of Veterans Affairs in accordance with the provisions of title 38, U.S. Code, will be negotiated under the authority of 41 U.S.C. 253(c)(3) (except prosthetics research authorized by 38 U.S.C. 7303 will be negotiated under the authority of 41 U.S.C. 253(c)(5), regardless of the dollar amount). Such acquisitions require justifications and approvals required by FAR 6.303 and 48 CFR 806.304.

**806.302-5 Authorized or required by statute.**

(a) Scarce Medical Specialist contracts negotiated under the authority of 38 U.S.C. 7409 are approved for other than full and open competition *only* when such contracts are with institutions affiliated with the Department of Veterans Affairs pursuant to 38 U.S.C. 7302. The justification and approval requirements of FAR 6.303 and 806.304 are still applicable.

(b) Contracts or agreements for the mutual use or exchange of use of health-care resources, consisting of commercial services, the use of medical equipment or space, or research, negotiated under the authority of 38 U.S.C. 8151-8153, are approved for other than full and open competition only when such contracts or agreements are with institutions affiliated with the Department of Veterans Affairs, pursuant to 38 U.S.C. 7302, with medical practice groups or other approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), or with blood banks, organ banks, or research centers. The justification and approval requirements of FAR 6.303 and VAAR 806.304 do not apply to such contracts or agreements.

(c) Contracts or agreements for the mutual use or exchange of use of health-care resources, consisting of commercial services or the use of medical equipment or space, negotiated under the authority of 38 U.S.C. 8151-8153, and not acquired under the authority of paragraph (b) of this section, may be conducted without regard to any law or regulation that would otherwise require the use of competitive procedures for procuring

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resources, provided the procurement is conducted in accordance with the simplified procedures contained in (VAAR) 48 CFR part 873. The justification and approval requirements of FAR 6.303 and 806.304 shall apply to such contracts or agreements conducted on a sole source basis.

(d) Various other sections of Title 38, United States Code, authorize the Secretary to enter into certain contracts, and certain types of contracts, without regard to any other provision of law. The justification and approval requirements specified in FAR 6.303 and 806.304 are still applicable. VA contracting officers entering into contracts using other than competitive procedures for any of the following items or services, estimated to cost in excess of the simplified acquisition threshold, will cite, in addition to 41 U.S.C. 253(c)(5), the appropriate section of Title 38, United State Code, as their authority to do so.

(1) Contracts for orthopedic and prosthetic appliances and related services including research. 38 U.S.C. 8123.

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- (2) Contracts to purchase or sell merchandise, equipment, fixtures, supplies and services for the operation of the Veterans Canteen Service. 38 U.S.C. 7802.
- (3) Contracts or leases for the operation of parking facilities established under authority of 38 U.S.C. 8109(b), provided that the establishment, operation, and maintenance of such facilities have been authorized by the Secretary or designee. 38 U.S.C. 8109(f).
- (4) Contracts for laundry and other common services such as the purchase of steam, may be noncompetitively negotiated with non-profit, tax-exempt, educational, medical, or community institutions, when specifically approved by the Secretary or designee and when such services are not reasonably available from private commercial sources. 38 U.S.C. 8122(c).
- (5) Contracts or agreements with public or private agencies for services of translators. 38 U.S.C. 513.
- (6) Contracts for nursing home care. 38 U.S.C. 1720.

**806.302-7 Public interest.**

Use of 41 U.S.C. 253(c)(7) to support contract award using other than full and open competition will require a D&F prepared in accordance with FAR subpart 1.7 and VAAR subpart 801.7 and signed by the Secretary. The D&F will be prepared by the contracting officer and submitted by the head of contracting activity (Subpart 802.1) to the Agency Competition Advocate (806.501). The submission will include:

- (a) The date of expected contract award (*Note: Congress must be notified 30 days prior to award*), and
- (b) A justification prepared by the contracting officer in accordance with FAR 6.303.

**806.304 Approval of the justification.**

- (a) Approvals of justifications as specified in FAR 6.304, prepared in accordance with FAR 6.303, will be approved as follows:

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(1) For a proposed contract not exceeding \$100,000, one contracting level above the contracting officer (see Subpart 801.6). However, if the contracting officer is also the head of the contracting activity approval will be made by:

(i) The medical center director for acquisitions at Veterans Health Administration (VHA) medical facilities, or

(ii) The Agency Competition Advocate (806.501(a)) in all other cases.

(2) For a proposed contract over \$100,000 but not exceeding \$1,000,000, by the Contracting Activity Competition Advocate (806.501(b)). However, if the Contracting Activity Competition Advocate is also the contracting officer, approval will be made by:

(i) The medical center director for acquisitions at VHA medical centers, or

(ii) The Agency Competition Advocate in all other cases.

(3) For a proposed contract over \$1,000,000 but not exceeding \$10,000,000 by the Agency Competition Advocate (806.501(a)).

(4) For a proposed contract over \$10,000,000 by the Senior Procurement Executive (see 802.100).

(b) Class justifications as specified in FAR 6.304(c), will be approved by the Agency Competition Advocate regardless of dollar amount.

**SUBPART 806.4 - SEALED BIDDING AND COMPETITIVE PROPOSALS**

**806.401 Sealed bidding and competitive proposals.**

Contracting officers shall solicit sealed bids if the contract is expected to exceed the small purchase limitation or expected to exceed \$1,000 for contracts made for repairs to property acquired by VA under 38 U.S.C. Chapter 37 and the criteria in FAR 6.401(a) are met. The contract file shall include any findings by the contracting officer that sealed bidding is not appropriate.

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**SUBPART 806.5 - COMPETITION ADVOCATES**

**806.501 Requirement.**

(a) The Associate Deputy Assistant Secretary for Acquisitions (90A), is designated as the Agency Competition Advocate.

(b) The Executive Director and Chief Operating Officer, VA National Acquisition Center, or designee, will serve as the Competition Advocate for the Center. Each head of the contracting activity (see Subpart 802.1) or designee will serve as the Contracting Activity Competition Advocate in all other cases.

**806.502 Duties and responsibilities.**

In addition to the responsibilities identified in FAR 6.502(a), the Agency Competition Advocate will coordinate the competition advocacy program as it is implemented at all VA contracting activities. The Agency Competition Advocate will:

- (a) Establish program guidelines to be used by contracting activity competition advocates;
- (b) Assist contracting activity competition advocates with obstacles to promoting competition;
- (c) Utilize supply technical surveys, other facility reports, and the Federal Procurement Data System to monitor contracting activity compliance with the advocacy program;

**| 806.570 Planning requirements.**

*Competition Plan.* Each Contracting Activity Competition Advocate shall develop a Competition Plan and incorporate the Plan in the internal operating procedures of the facility or organization in which the contracting activity is located. It is essential that the plan be endorsed and supported by top level management and be clearly understood by the services and offices that the contracting activity support. As a minimum, the plan shall include:

- (a) The approval requirements for other than full and open competition specified in FAR 6.304;



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- (b) A description of the synopsis requirements contained in FAR Subpart 5.2 in order that the necessity for Advance Procurement Planning is fully understood;
- (c) A description of how the Competition Plan should be integrated into Advance Procurement Planning;
- (d) Identification of any known obstacles to competition and a proposal for overcoming them;
- (e) A method for otherwise increasing competition for contracts on the basis of cost and other significant factors.

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